



DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of H-2A and H-2B Aliens in the United States: 2016 Allowable Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging.

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing this Notice to announce (1) the allowable charges for 2016 that employers seeking H-2A workers in occupations other than range herding may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2016 under the H-2A and H-2B programs. The Notice also includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

DATES: This notice is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: William W. Thompson, II, Acting Administrator, Office of Foreign Labor Certification (OFLC), U.S. Department of Labor, Ste. 12-200, 200 Constitution Avenue, NW., Washington, DC 20210.
Telephone: 202-513-7350 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The United States (U.S.) Citizenship and Immigration Services (USCIS) of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A or H-2B nonimmigrant temporary workers in the U.S. unless the petitioner has received from the DOL an H-2A or H-2B labor certification. Both the H-2A and H-2B labor certifications provide that: (1) there are not sufficient U.S. workers who are qualified and who will be available to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. See 20 CFR 655.1(a) (H-2B); 20 CFR 655.100 (H-2A).

Allowable Meal Charge

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H-2A workers who are not engaged in range occupations are three meals a day or free and convenient cooking and kitchen facilities so workers may prepare their own meals.¹ 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. Id.

The Department establishes the methodology for determining the maximum amounts that H-2A agricultural employers may charge their U.S. and foreign workers for providing them with three meals per day during employment. 20 CFR 655.173(a). This methodology allows for annual adjustments of the previous year's maximum allowable charge based upon updated Consumer Price Index (CPI) data. Id. The maximum charge

¹ H-2A employers must provide workers engaged in herding or the production of livestock on the range meals or food to prepare meals without charge or deposit charge. 20 CFR 655.210(e).

allowed by 20 CFR 655.122(g) is adjusted by the same percentage as the 12-month percent change in the CPI for all Urban Consumers for Food (CPI-U for Food).² Id. The OFLC Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The percentage change in the CPI-U for Food between December 2014 and December 2015 was 1.9 percent. Accordingly, the maximum allowable charge under 20 CFR 655.122(g) shall be no more than \$12.09 per day, unless the OFLC Certifying Officer approves a higher charge as authorized under 20 CFR 655.173(b).

Reimbursement for Daily Travel Subsistence

The H-2A regulations (20 CFR 655.122(h)(1)) and the H-2B regulations (20 CFR 655.20(j)(1)(i)) establish that the minimum daily travel subsistence expense for meals, for which a worker is entitled to reimbursement, must be at least as much as the employer would charge for providing the worker with three meals a day during employment (if applicable). The minimum daily travel subsistence expense for meals may in no event be less than the amount permitted under § 655.173(a), i.e., the charge annually adjusted by the 12-month percentage change in CPI-U for Food.

The Department bases the maximum meals component of the daily travel subsistence expense on the standard minimum Continental United States (CONUS) per diem rate as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A, and now found at *www.gsa.gov/perdiem*. The CONUS

² Consumer Price Index – December 2015, published January 20, 2016 at <http://data.bls.gov/pdq/SurveyOutputServlet>

minimum meals component increases to \$51.00 per day for 2016.³ Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, up to 75 percent of the maximum reimbursement for meals, or \$38.25, based on the GSA per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.173 as specified above.

The term “subsistence” includes both meals and lodging during travel to and from the worksite. Therefore, an H-2A employer is responsible for providing (either paying in advance or reimbursing a worker) the reasonable costs of transportation and daily subsistence between the employer’s worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the work contract period, and upon the worker completing the contract or being dismissed without cause, return costs. Similarly, an H-2B employer is responsible for providing (either paying in advance or reimbursing a worker) the reasonable costs of transportation and daily subsistence between the employer’s worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the job order period of employment, and upon the worker completing the job order period of employment or being dismissed early, return costs. In those instances where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of

³ Maximum Per Diem Rates for the Continental United States (CONUS), 80 FR 52753 (September 1, 2015); see also www.gsa.gov/perdiem.

that part of the travel as well.

Employers are required to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those instances where it is necessary, lodging. The minimum and maximum daily travel meal reimbursement amounts are established above. If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and if the worker completes the contract or is dismissed as described above, return transportation and subsistence costs, including lodging costs where necessary. This policy applies equally to instances where the worker is traveling within the U.S. to the employer's worksite.

For further information on when the employer is responsible for lodging costs, please see the Department's H-2A Frequently Asked Questions on Travel and Daily Subsistence, which may found on the OFLC website:
<http://www.foreignlaborcert.doleta.gov/>.

Signed in Washington, D.C.

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Assistant Secretary,
Employment and Training Administration

Billing Code 4510-FP-P

